

SECOND REGULAR SESSION

# HOUSE BILL NO. 1898

## 101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KNIGHT.

3538H.01I

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To repeal sections 266.355, 643.050, 643.079, and 643.245, RSMo, and to enact in lieu thereof three new sections relating to anhydrous ammonia.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 266.355, 643.050, 643.079, and 643.245, RSMo, are repealed  
2 and three new sections enacted in lieu thereof, to be known as sections 643.050, 643.079, and  
3 643.245, to read as follows:

643.050. 1. In addition to any other powers vested in it by law the commission shall  
2 have the following powers:

3 (1) Adopt, promulgate, amend and repeal rules and regulations consistent with the  
4 general intent and purposes of sections 643.010 to 643.355, chapter 536, ~~and~~ Titles V and VI  
5 of the federal Clean Air Act, as amended, 42 U.S.C. 7661[5] et seq., **and 42 U.S.C. Section**  
6 **7412(r), as amended, for covered processes of agricultural stationary sources that use,**  
7 **store, or sell anhydrous ammonia,** including, but not limited to:

8 (a) Regulation of use of equipment known to be a source of air contamination;

9 (b) Establishment of maximum quantities of air contaminants that may be emitted  
10 from any air contaminant source; ~~and~~

11 (c) Regulations necessary to enforce the provisions of Title VI of the Clean Air Act,  
12 as amended, 42 U.S.C. 7671[5] et seq., regarding any Class I or Class II substances as defined  
13 therein; **and**

14 (d) **Regulations necessary to implement and enforce the risk management plans**  
15 **under 42 U.S.C. Section 7412(r), as amended, for agricultural facilities that use, store, or**  
16 **sell anhydrous ammonia;**

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17           (2) After holding public hearings in accordance with section 643.070, establish areas  
18 of the state and prescribe air quality standards for such areas giving due recognition to  
19 variations, if any, in the characteristics of different areas of the state which may be deemed by  
20 the commission to be relevant;

21           (3) (a) To require persons engaged in operations which result in air pollution to  
22 monitor or test emissions and to file reports containing information relating to rate, period of  
23 emission and composition of effluent;

24           (b) Require submission to the director for approval of plans and specifications for any  
25 article, machine, equipment, device, or other contrivance specified by regulation the use of  
26 which may cause or control the issuance of air contaminants; but any person responsible for  
27 complying with the standards established under sections 643.010 to 643.355 shall determine,  
28 unless found by the director to be inadequate, the means, methods, processes, equipment and  
29 operation to meet the established standards;

30           (4) Hold hearings upon appeals from orders of the director or from any other actions  
31 or determinations of the director hereunder for which provision is made for appeal, and in  
32 connection therewith, issue subpoenas requiring the attendance of witnesses and the  
33 production of evidence reasonably relating to the hearing;

34           (5) Enter such order or determination as may be necessary to effectuate the purposes  
35 of sections 643.010 to 643.355. In making its orders and determinations hereunder, the  
36 commission shall exercise a sound discretion in weighing the equities involved and the  
37 advantages and disadvantages to the person involved and to those affected by air  
38 contaminants emitted by such person as set out in section 643.030. If any small business,  
39 as defined by section 643.020, requests information on what would constitute compliance  
40 with the requirements of sections 643.010 to 643.355 or any order or determination of the  
41 department or commission, the department shall respond with written criteria to inform the  
42 small business of the actions necessary for compliance. No enforcement action shall be  
43 undertaken by the department or commission until the small business has had a period of  
44 time, negotiated with the department, to achieve compliance;

45           (6) Cause to be instituted in a court of competent jurisdiction legal proceedings to  
46 compel compliance with any final order or determination entered by the commission or the  
47 director;

48           (7) Settle or compromise in its discretion, as it may deem advantageous to the state,  
49 any suit for recovery of any penalty or for compelling compliance with the provisions of any  
50 rule;

51           (8) Develop such facts and make such investigations as are consistent with the  
52 purposes of sections 643.010 to 643.355, and, in connection therewith, to enter or authorize  
53 any representative of the department to enter at all reasonable times and upon reasonable

54 notice in or upon any private or public property for the purpose of inspecting or investigating  
55 any condition which the commission or director shall have probable cause to believe to be an  
56 air contaminant source or upon any private or public property having material information  
57 relevant to said air contaminant source. The results of any such investigation shall be reduced  
58 to writing, and a copy thereof shall be furnished to the owner or operator of the property. No  
59 person shall refuse entry or access, requested for purposes of inspection under this provision,  
60 to an authorized representative of the department who presents appropriate credentials, nor  
61 obstruct or hamper the representative in carrying out the inspection. A suitably restricted  
62 search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by  
63 any judge having jurisdiction to any such representative for the purpose of enabling him to  
64 make such inspection;

65 (9) Secure necessary scientific, technical, administrative and operational services,  
66 including laboratory facilities, by contract or otherwise, with any educational institution,  
67 experiment station, or any board, department, or other agency of any political subdivision or  
68 state or the federal government;

69 (10) Classify and identify air contaminants; and

70 (11) Hold public hearings as required by sections 643.010 to 643.355.

71 2. No rule or portion of a rule promulgated under the authority of this chapter shall  
72 become effective unless it has been promulgated pursuant to the provisions of section  
73 536.024.

74 3. The commission shall have the following duties with respect to the prevention,  
75 abatement and control of air pollution:

76 (1) Prepare and develop a general comprehensive plan for the prevention, abatement  
77 and control of air pollution;

78 (2) Encourage voluntary cooperation by persons or affected groups to achieve the  
79 purposes of sections 643.010 to 643.355;

80 (3) Encourage political subdivisions to handle air pollution problems within their  
81 respective jurisdictions to the extent possible and practicable and provide assistance to  
82 political subdivisions;

83 (4) Encourage and conduct studies, investigations and research;

84 (5) Collect and disseminate information and conduct education and training  
85 programs;

86 (6) Advise, consult and cooperate with other agencies of the state, political  
87 subdivisions, industries, other states and the federal government, and with interested persons  
88 or groups;

89 (7) Represent the state of Missouri in all matters pertaining to interstate air pollution  
90 including the negotiations of interstate compacts or agreements.

91           4. Nothing contained in sections 643.010 to 643.355 shall be deemed to grant to the  
92 commission or department any jurisdiction or authority with respect to air pollution existing  
93 solely within commercial and industrial plants, works, or shops or to affect any aspect of  
94 employer-employee relationships as to health and safety hazards.

95           5. Any information relating to secret processes or methods of manufacture or  
96 production discovered through any communication required under this section shall be kept  
97 confidential.

          643.079. 1. Any air contaminant source required to obtain a permit issued under  
2 sections 643.010 to 643.355 shall pay annually beginning April 1, 1993, a fee as provided  
3 herein. For the first year the fee shall be twenty-five dollars per ton of each regulated air  
4 contaminant emitted. Thereafter, the fee shall be set every three years by the commission by  
5 rule and shall be at least twenty-five dollars per ton of regulated air contaminant emitted but  
6 not more than forty dollars per ton of regulated air contaminant emitted in the previous  
7 calendar year. If necessary, the commission may make annual adjustments to the fee by rule.  
8 The fee shall be set at an amount consistent with the need to fund the reasonable cost of  
9 administering sections 643.010 to 643.355, taking into account other moneys received  
10 pursuant to sections 643.010 to 643.355. For the purpose of determining the amount of air  
11 contaminant emissions on which the fees authorized under this section are assessed, a facility  
12 shall be considered one source ~~[under the definition of]~~ **as described in** subsection 2 of  
13 section 643.078, except that a facility with multiple operating permits shall pay the emission  
14 fees authorized under this section separately for air contaminants emitted under each  
15 individual permit.

16           2. A source which produces charcoal from wood shall pay an annual emission fee  
17 under this subsection in lieu of the fee established in subsection 1 of this section. The fee  
18 shall be based upon a maximum fee of twenty-five dollars per ton and applied upon each ton  
19 of regulated air contaminant emitted for the first four thousand tons of each contaminant  
20 emitted in the amount established by the commission pursuant to subsection 1 of this section,  
21 reduced according to the following schedule:

22           (1) For fees payable under this subsection in the years 1993 and 1994, the fee shall be  
23 reduced by one hundred percent;

24           (2) For fees payable under this subsection in the years 1995, 1996 and 1997, the fee  
25 shall be reduced by eighty percent;

26           (3) For fees payable under this subsection in the years 1998, 1999 and 2000, the fee  
27 shall be reduced by sixty percent.

28           3. The fees imposed in subsection 2 of this section shall not be imposed or collected  
29 after the year 2000 unless the general assembly reimposes the fee.

30           4. Each air contaminant source with a permit issued under sections 643.010 to  
31 643.355 shall pay the fee for the first four thousand tons of each regulated air contaminant  
32 emitted each year but no air contaminant source shall pay fees on total emissions of regulated  
33 air contaminants in excess of twelve thousand tons in any calendar year. A permitted air  
34 contaminant source which emitted less than one ton of all regulated pollutants shall pay a fee  
35 equal to the amount per ton set by the commission. An air contaminant source which pays  
36 emission fees to a holder of a certificate of authority issued pursuant to section 643.140 may  
37 deduct such fees from any amount due under this section. The fees imposed in this section  
38 shall not be applied to carbon oxide emissions. The fees imposed in subsection 1 **of this**  
39 **section** and this subsection shall not be applied to sulfur dioxide emissions from any Phase I  
40 affected unit subject to the requirements of Title IV, Section 404, of the federal Clean Air Act,  
41 as amended, 42 U.S.C. Section 7651[;] et seq., any sooner than January 1, 2000. The fees  
42 imposed on emissions from Phase I affected units shall be consistent with and shall not  
43 exceed the provisions of the federal Clean Air Act, as amended, and the regulations  
44 promulgated thereunder. Any such fee on emissions from any Phase I affected unit shall be  
45 reduced by the amount of the service fee paid by that Phase I affected unit pursuant to  
46 subsection 8 of this section in that year. Any fees that may be imposed on Phase I sources  
47 shall follow the procedures set forth in subsection 1 **of this section** and this subsection and  
48 shall not be applied retroactively.

49           5. Moneys collected under this section shall be transmitted to the director of revenue  
50 for deposit in appropriate subaccounts of the natural resources protection fund created in  
51 section 640.220. A subaccount shall be maintained for fees paid by air contaminant sources  
52 which are required to be permitted under Title V of the federal Clean Air Act, as amended, 42  
53 U.S.C. Section 7661[;] et seq., and used, upon appropriation, to fund activities by the  
54 department to implement the operating permits program authorized by Title V of the federal  
55 Clean Air Act, as amended. Another subaccount shall be maintained for fees paid by air  
56 contaminant sources which are not required to be permitted under Title V of the federal Clean  
57 Air Act as amended, and used, upon appropriation, to fund other air pollution control program  
58 activities. Another subaccount shall be maintained for service fees paid under subsection 8 of  
59 this section by Phase I affected units which are subject to the requirements of Title IV, Section  
60 404, of the federal Clean Air Act Amendments of 1990 (**42 U.S.C. Section 7651c**), as  
61 amended, [~~42 U.S.C. Section 7651,~~] and used, upon appropriation, to fund air pollution  
62 control program activities. The provisions of section 33.080 to the contrary notwithstanding,  
63 moneys in the fund shall not revert to general revenue at the end of each biennium. Interest  
64 earned by moneys in the subaccounts shall be retained in the subaccounts. The per-ton fees  
65 established under subsection 1 of this section may be adjusted annually, consistent with the  
66 need to fund the reasonable costs of the program, but shall not be less than twenty-five dollars

67 per ton of regulated air contaminant nor more than forty dollars per ton of regulated air  
68 contaminant. The first adjustment shall apply to moneys payable on April 1, 1994, and shall  
69 be based upon the general price level for the twelve-month period ending on August thirty-  
70 first of the previous calendar year.

71 6. The department may initiate a civil action in circuit court against any air  
72 contaminant source which has not remitted the appropriate fees within thirty days. In any  
73 judgment against the source, the department shall be awarded interest at a rate determined  
74 pursuant to section 408.030 and reasonable attorney's fees. In any judgment against the  
75 department, the source shall be awarded reasonable attorney's fees.

76 7. The department shall not suspend or revoke a permit for an air contaminant source  
77 solely because the source has not submitted the fees pursuant to this section.

78 8. Any Phase I affected unit which is subject to the requirements of Title IV, Section  
79 404, of the federal Clean Air Act **Amendments of 1990 (42 U.S.C. Section 7651c)**, as  
80 amended, [~~42 U.S.C. Section 7651,~~] shall pay annually beginning April 1, 1993, and  
81 terminating December 31, 1999, a service fee for the previous calendar year as provided  
82 herein. For the first year, the service fee shall be twenty-five thousand dollars for each Phase  
83 I affected generating unit to help fund the administration of sections 643.010 to 643.355.  
84 Thereafter, the service fee shall be annually set by the commission by rule, following public  
85 hearing, based on an annual allocation prepared by the department showing the details of all  
86 costs and expenses upon which such fees are based consistent with the department's  
87 reasonable needs to administer and implement sections 643.010 to 643.355 and to fulfill its  
88 responsibilities with respect to Phase I affected units, but such service fee shall not exceed  
89 twenty-five thousand dollars per generating unit. Any such Phase I affected unit which is  
90 located on one or more contiguous tracts of land with any Phase II generating unit that pays  
91 fees under subsection 1 or subsection 2 of this section shall be exempt from paying service  
92 fees under this subsection. A "contiguous tract of land" shall be defined to mean adjacent  
93 land, excluding public roads, highways and railroads, which is under the control of or owned  
94 by the permit holder and operated as a single enterprise.

95 9. The department of natural resources shall determine the fees due pursuant to this  
96 section by the state of Missouri and its departments, agencies and institutions, including two-  
97 and four-year institutions of higher education. The director of the department of natural  
98 resources shall forward the various totals due to the joint committee on capital improvements  
99 and the directors of the individual departments, agencies and institutions. The departments,  
100 as part of the budget process, shall annually request by specific line item appropriation funds  
101 to pay said fees and capital funding for projects determined to significantly improve air  
102 quality. If the general assembly fails to appropriate funds for emissions fees as specifically  
103 requested, the departments, agencies and institutions shall pay said fees from other sources of

104 revenue or funds available. The state of Missouri and its departments, agencies and  
105 institutions may receive assistance from the small business technical assistance program  
106 established pursuant to section 643.173.

107       **10. Each retail agricultural facility that uses, stores, or sells anhydrous ammonia**  
108 **that is an air contaminant source subject to the risk management plan under 42 U.S.C.**  
109 **Section 7412(r), as amended, shall pay an annual registration fee of two hundred**  
110 **dollars. In addition, each retail agricultural facility that uses, stores, or sells anhydrous**  
111 **ammonia shall pay an annual tonnage fee calculated on the number of tons of**  
112 **anhydrous ammonia sold. The initial retail tonnage fee shall be set at one dollar and**  
113 **twenty-five cents per ton of anhydrous ammonia used or sold. Each distributor or**  
114 **terminal agricultural facility that uses, stores, or sells anhydrous ammonia that is an air**  
115 **contaminant source subject to the risk management plan program 3 under 40 CFR Part**  
116 **68 shall pay an annual registration fee of five thousand dollars and shall not pay a**  
117 **tonnage fee. The annual registration fees and tonnage fee may be periodically revised**  
118 **under subsection 11 of this section. However, the fees collected shall be used exclusively**  
119 **for the purposes of administering the provisions of 42 U.S.C. Section 7412(r), as**  
120 **amended, for such agricultural facilities. Fees paid by agricultural air contaminant**  
121 **sources that use, store, or sell anhydrous ammonia for the purposes of implementing the**  
122 **requirements of 42 U.S.C. Section 7412(r), as amended, shall be deposited into the**  
123 **anhydrous ammonia risk management plan subaccount within the natural resources**  
124 **protection fund created in section 643.245. If the funding exceeds the reasonable costs**  
125 **to administer the programs as set forth in this section, the department of natural**  
126 **resources shall reduce fees for all registrants if the fees derived exceed the reasonable**  
127 **cost of administering the risk management plan under 42 U.S.C. Section 7412(r), as**  
128 **amended.**

129       **11. Notwithstanding any statutory fee amounts or maximums to the contrary, the**  
130 **department of natural resources may conduct a comprehensive review and propose changes to**  
131 **the fee structure authorized by sections 643.073, 643.075, 643.079, 643.225, 643.228,**  
132 **643.232, 643.237, and 643.242 after holding stakeholder meetings in order to solicit**  
133 **stakeholder input from each of the following groups: the asbestos industry, electric utilities,**  
134 **mineral and metallic mining and processing facilities, cement kiln representatives, and any**  
135 **other interested industrial or business entities or interested parties. The department shall**  
136 **submit a proposed fee structure with stakeholder agreement to the air conservation**  
137 **commission. The commission shall review such recommendations at the forthcoming regular**  
138 **or special meeting, but shall not vote on the fee structure until a subsequent meeting. If the**  
139 **commission approves, by vote of two-thirds majority or five of seven commissioners, the fee**  
140 **structure recommendations, the commission shall authorize the department to file a notice of**

141 proposed rulemaking containing the recommended fee structure, and after considering public  
142 comments, may authorize the department to file the order of rulemaking for such rule with the  
143 joint committee on administrative rules pursuant to sections 536.021 and 536.024 no later  
144 than December first of the same year. If such rules are not disapproved by the general  
145 assembly in the manner set out below, they shall take effect on January first of the following  
146 calendar year and the previous fee structure shall expire upon the effective date of the  
147 commission-adopted fee structure. Any regulation promulgated under this subsection shall be  
148 deemed to be beyond the scope and authority provided in this subsection, or detrimental to  
149 permit applicants, if the general assembly, within the first sixty calendar days of the regular  
150 session immediately following the filing of such regulation, by concurrent resolution  
151 disapproves the regulation by concurrent resolution. If the general assembly so disapproves  
152 any regulation filed under this subsection, the commission shall continue to use the previous  
153 fee structure. The authority of the commission to further revise the fee structure as provided  
154 by this subsection shall expire on August 28, 2024.

643.245. 1. All moneys received pursuant to sections 643.225 to 643.245 and any  
2 other moneys so designated shall be placed in the state treasury and credited to the "Natural  
3 Resources Protection Fund — Air Pollution Asbestos Fee Subaccount", which is hereby  
4 created. Such moneys received pursuant to sections 643.225 to 643.245 shall, subject to  
5 appropriation, be used solely for the purpose of administering this chapter. Any unexpended  
6 balance in such fund at the end of any appropriation period shall not be transferred to the  
7 general revenue fund of the state treasury and shall be exempt from the provisions of section  
8 33.080.

9       2. **All moneys received under subsection 10 of section 643.079 and any other**  
10 **moneys so designated shall be placed in the "Natural Resources Protection Fund -**  
11 **Anhydrous Ammonia Risk Management Plan Subaccount", which is hereby created.**  
12 **Such moneys received under subsection 10 of section 643.079 shall, subject to**  
13 **appropriation, be used solely for the purpose of administering the provisions of**  
14 **section 643.079. Any unexpended balance in such fund at the end of any appropriation**  
15 **period shall not be transferred to the general revenue fund of the state treasury and**  
16 **shall be exempt from the provisions of section 33.080.**

17       3. The state treasurer, with the approval of the board of fund commissioners, is  
18 authorized to deposit all of the moneys in any of the qualified state depositories. All such  
19 deposits shall be secured in such manner and shall be made upon such terms and conditions as  
20 are now and may hereafter be approved by law relative to state deposits. Any interest  
21 received on such deposits shall be credited to the natural resources protection fund — air  
22 pollution asbestos fee subaccount.



2       ~~[266.355. Unless provided for by federal law, rule or regulation, the~~  
3       ~~director of the department of agriculture shall promulgate, pursuant to chapter~~  
4       ~~536, and enforce regulations setting forth minimum general standards covering~~  
5       ~~the design, construction, location, installation, and operation of equipment for~~  
6       ~~storing, handling, transporting by tank truck, tank trailer, tank car and utilizing~~  
7       ~~anhydrous ammonia. The provisions of this section shall not apply to~~  
8       ~~equipment which is in use for storing anhydrous ammonia as of August 28,~~  
9       ~~2010, and which is found by the department to be in substantial compliance~~  
10       ~~with generally accepted standards of safety regarding life and property. The~~  
11       ~~department shall adopt the minimum general safety standards for the storage~~  
12       ~~and handling of anhydrous ammonia set forth in ANSI Standard K61.1-1999,~~  
13       ~~Safety Requirements for the Storage and Handling of Anhydrous Ammonia;~~  
14       ~~except that, ANSI Standard K61.1-1999 shall not be adopted by the~~  
15       ~~department prior to December 1, 2012. For purposes of this section,~~  
      ~~"ANSI" means the American National Standards Institute.]~~

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